Docket 0065292

In the United States Patent and Trademark Office

In re Application of:	Freeman, Victoria J.		
Serial No.:	09/640,369	Group Art Unit:	3714
Filed:	08/17/2000	Examiner:	Ashburn, Steven L.
For:	METHOD AND APPARATUS FOR CONDUCTING A COMPETITION USING A DIVIDED LITERARY WORK		

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DATE OF DEPOSIT or FAX: 01/27/2005 By: _____

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

January 26, 2005

RESPONSE AND REQUEST FOR REINSTATEMENT OF APPEAL

Sir:

This is in response to the Official Action mailed 10/28/2004.

The Official Action was non-final and reopened the prosecution. Applicant was given two choices, one of which was to "request reinstatement of the appeal".

Applicant hereby requests that the appeal be reinstated.

A Supplemental Appeal Brief is filed herewith.

Respectfully submitted,

Auzville Jackson, Jr.
Registration No. 17,306
8652 Rio Grande Road
Richmond, VA 23229
Tel: 804-740-6828
Fax: 804-740-1881

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SUPPLEMENTAL APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

January 26, 2005

Sir:

I. BACKGROUND

Applicant filed an Appeal Brief on July 30, 2004, which was received by the USPTO on August 2, 2004.

The Examiner responded by issuing a non-final rejection mailed October 28, 2004 and stated: PROSECUTION IS HEREBY REOPENED. The rejection then proceeded to reject all claims as being unpatentable over the same references as used in the original Final Rejection that was the basis for the earlier Appeal Brief.

The non-final rejection gave Applicant two choices. One of the choices was to request reinstatement of the appeal, which Applicant has elected to do. The rejection also stated a Supplemental Appeal Brief must be filed which has led to the present paper.

II. NEW GROUND OF REJECTION

The Examiner's new ground of rejection indicated he was persuaded that the claim limitation "literary work" was not given full credence so the rejection was withdrawn and prosecution was reopened. (Note: the definition of "literary work" as used in the application means "At a minimum, a literary work must comprise at least 100 words or more and constitute an original work of authorship."

The Examiner then proceeded to reject all of the claims on the same general grounds as the previous final rejection saying that the claimed invention was unpatentable over Hopkins, et al., U.S. Patent 4,756,533 in view of Pritchard, U.S. Patent 1,217,632. The Examiner also added as new prior art some nursery rhymes. Though mentioned in the rejection, the new prior art was stated as "The following prior art of record is not relied upon but is considered pertinent to applicant's disclosure:' Nursery Rhymes from Mother Goose.' Zelo.com includes a plethora of common nursery rhymes, which are over 100 words long. "

III. SUPPLEMENTAL ARGUMENTS

A. Hopkins, et al. relates to a picture used to make the jigsaw puzzle and there is no literature involved.

As shown in the Appeal Brief, a comparison of claim 26 shows numerous differences from Hopkins, et al.

B. The Examiner is not interpreting Pritchard correctly.

Pritchard is a secondary reference, which is used to modify the principal reference of Hopkins, et al. Apparently it is used because it has some short nursery rhymes or parts of nursery rhymes in some of the pictures, and the Examiner feels it would be obvious to incorporate such text into Hopkins, et al.

Basically, Pritchard is a picture stamp puzzle with every picture shown having scenery and, in some cases, a few short words of text.

There is no indication that the rhymes are meant to be over 100 words long. For example, Pritchard says that" in Fig. 4 there is shown a series of pictures and verse parts (emphasis added) representing the following nursery rhymes with verse "Simple Simon", "Jack and Jill", "Tom, Tom, the Piper's Son", "Humpty Dumpty", one or more of each picture, ..."

Thus, even though some of these rhymes are more than 100 words, Pritchard was only using part of the verse. Even if this was not true, there are numerous reasons

Pritchard does not meet the limitations of Applicant's claims as pointed out in the Appeal Brief.

C. The Examiner's Modification of Hopkins, et al. by combining with Pritchard is incorrect.

As fully set forth in the Appeal Brief, Hopkins et al. and Pritchard, even when combined, do not teach Applicant's claimed invention and, even so, there is no indication that such a combination is suggested by either of the two references. This is a clear case of using hindsight knowledge, which is impermissible.

D. The Examiner is incorrect in the interpretation and application of the law relating to the weight given preamble limitations in the present instance.

The sine quo non of the invention is "a method for promoting literacy." This is the essence of the invention and the only place this limitation occurs is in the preamble of the claim. This limitation in the preamble gives life and meaning to the claim.

The Examiner mentions that Pritchard teaches promoting literacy and cites column 1 lines 105 to 109. However, all that Pritchard says at this citation is: "The picture puzzle not only entertaining, and instructive to children, and even to adults, as the theme and the puzzle may be varied and rendered as difficult as desired (Emphasis Added)." There is nothing here about promoting literacy. Literacy is about reading and writing and not about pictures.

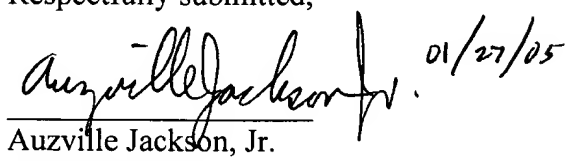
IV. CONCLUSION

The present invention provides an important function of promoting literacy, the ability to read and write, by assisting in helping this societal cause. It is especially important in a nation that is rapidly increasing with more and more citizens who use English as a second language. It is also important to children that spend large amounts of their time watching television or playing electronic action games.

Although for patent protection, the definition of literary work must comprise at least 100 words, this is a minimum requirement and the actual products would normally contain a much greater number of words.

This method for promoting literacy is an invention that needs patent protection in order to be brought to the public and it is hoped that the arguments made in the Appeal Brief and the above discussion will persuade the USPTO to grant a patent on the claimed invention.

Respectfully submitted,



01/27/05

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Richmond, VA 23229
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